

REMARKS

I. Overview

Claims 1-30 are pending in the present application. No amendments to the claims are being made at this time. The issue raised in the Non-Final Office Action of May 23, 2007 (*Office Action*) is as follows:

- Claims 1-30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0075813 (*Baldonado*).

In response, Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented below.

II. Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1-30 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Baldonado*. *Office Action* at p. 2. Applicant traverses the rejection and asserts that these claims are allowable, at least, for the reasons stated below.

To anticipate a claim under 35 U.S.C. § 102, a single reference must teach each and every element of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). In fact, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Furthermore, for a reference to be anticipatory, “[its] elements must be arranged as required by the claim.” *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990), *cited in* M.P.E.P. § 2131. As discussed below, *Baldonado* fails to teach all elements of claims 1-30, and therefore fails to anticipate those claims under 35 U.S.C. § 102.

A. Independent Claims 1, 12, 21, 25, and 29

Claim 1 recites, in part, “content provider communicatively coupled to a plurality of service providers that provide access to a communication network.” The Office Action relies upon *Baldonado*’s “Routing Intelligence Unit” as meeting the claimed content provider. *Office Action* at p. 2. However, *Baldonado*’s routing intelligence units are “devices [that] inject BGP updates to the Edge Routers they control.” *Baldonado* at ¶ [0018]. As such,

“routing intelligence units” are clearly not content providers. *See e.g., Specification* at ¶ [0007].

Claim 1 also recites, in part, “an egress traffic manager operable to determine . . . an optimal balance of the content provider’s egress traffic to be routed to each of the plurality of service providers.” The Office seems to rely upon *Baldonado*’s “Decision Maker resource,” which is an element of *Baldonado*’s “Routing Intelligence Unit,” as meeting the claimed “egress traffic manager.” *Office Action* at p. 2, *citing Baldonado* at ¶ [0019]. However, *Baldonado*’s decision maker resource operates “to improve the end-user, application level performance of prefixes,” and not to determine an optimal balance of a content provider’s egress traffic, as recited in the claim. As note above, *Baldonado* does not discuss a content provider, much less optimally balancing the content’s provider egress traffic.

Therefore, *Baldonado* does not teach every element recited in claim 1. Claims 12, 21, 25, and 29 recite similar limitations, and thus are patentable at least for the same reasons presented above. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 102(b) rejection of record with respect to claims 1, 12, 21, 25, and 29 be withdrawn.

B. Dependent Claims 2-11, 13-20, 22-24, 26-28, and 30

Dependent claims 2-11, 13-20, 22-24, 26-28, and 30 depend from claims 1, 12, 21, 25, and 29, each dependent claim thus inheriting all the limitations of its respective independent claim. As noted above, *Baldonado* does not teach every element of independent claims 1, 12, 21, 25, and 29. Consequently, *Baldonado* also fails to teach every element of dependent claims 2-11, 13-20, 22-24, 26-28, and 30. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 102(b) rejection of record with respect to claims 2-11, 13-20, 22-24, 26-28, and 30 be withdrawn.

III. Conclusion

In view of the above, Applicant believes the pending application is in condition for allowance. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-1078, under Order No. 10021231-1 from which the undersigned is authorized to draw.

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: August 23, 2007

Signature: Donna Forbit
(Donna Forbit)

Respectfully submitted,

By Jody C. Bishop
Jody C. Bishop
Attorney/ Agent for Applicant(s)
Registration No.: 44,034
Dated: August 23, 2007
Telephone No.: (214) 855-8007